

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
BEAUFORT DIVISION

RECEIVED
U.S. DISTRICT COURT, CHARLESTON, SC
2013 JUL 30 P 3:28

Ricky Godfrey,)	
)	C/A No. 9:12-2153-RMG
Plaintiff,)	
)	
v.)	ORDER
)	
Sheriff Steven Mueller and)	
Nurse Margaret Stephens,)	
)	
Defendants.)	
_____)	

This matter is before the Court on the Report and Recommendation, (“R&R”), of the Magistrate Judge recommending dismissal of this *pro se* section 1983 action with prejudice for lack of prosecution. (Dkt. No. 33). For the reasons set forth below, the Court adopts the R&R as the order of the Court, DISMISSES this action with prejudice, and DENIES as moot Defendants’ pending motion for summary judgment, (Dkt. No. 25).

Background

Plaintiff filed this *pro se* claim pursuant to 28 U.S.C. § 1983 on August 1, 2012. (Dkt. No. 1). This matter was referred to a Magistrate Judge in accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2) DSC for all pretrial proceedings.

On April 24, 2013, Defendants filed a motion for summary judgment. (Dkt. No. 25). On May 8, 2013, the Magistrate Judge issued an order, pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975), directing the clerk to forward an explanation of the summary judgment and dismissal proceedings to Plaintiff. (Dkt. No. 28). Further, the order directed Plaintiff to respond to the motion for summary judgment by June 13, 2013. (*Id.*). On June 26, 2013, with no response to the motion for summary judgment having been received, the Magistrate Judge issued

another order instructing Plaintiff that failure to respond within ten (10) days would result in a recommendation of dismissal for lack of prosecution. (Dkt. No. 30). After no response was received from Plaintiff, on July 9, 2013, the Magistrate Judge issued the R&R recommending that the claim be dismissed with prejudice for lack of prosecution. (Dkt. No. 33). Plaintiff filed no objections to the R&R.

Legal Standard

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and responsibility for making a final determination remains with this Court. *Mathews v. Weber*, 423 U.S. 261, 270–71 (1976). This Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate.” 28 U.S.C. § 636(b)(1). In reviewing these pleadings, the Court is mindful of its charge to construe liberally the pleadings of this *pro se* litigant. *See, e.g., De’Lonta v. Angelone*, 330 F.3d 630, 633 (4th Cir. 2003).

Discussion

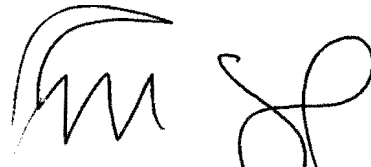
The Magistrate Judge dutifully reviewed the pleadings, accurately summarized the law, and correctly concluded that the Court should dismiss Plaintiff’s section 1983 claim for lack of prosecution. (Dkt. No. 33). Despite warnings from the Magistrate Judge that the claim would be dismissed for failure to prosecute, Plaintiff has failed to respond to Defendants’ motion for summary judgment. The last filing by the Plaintiff occurred on October 9, 2012, (Dkt. No. 15), indicating either dilatory action or abandonment of the claim. Finally, given the Magistrate Judge’s prior explicit warning that dismissal would be recommended if the Plaintiff failed to respond, dismissal is the only appropriate sanction. Accordingly, the Magistrate Judge was

correct in recommending that the Court find Plaintiff has satisfied all the criteria for dismissal set forth in *Chandler Leasing Corp. v. Lopez*, 669 F.2d 919, 920 (4th Cir. 1982). (Dkt. No. 33 at 2).

Conclusion

After careful review of the record, the Magistrate Judge's R&R, and the applicable law, this Court therefore adopts the R&R as the order of this Court. Accordingly, the Court DISMISSES this action with prejudice for lack of prosecution and DENIES as moot Defendants' pending motion for summary judgment, (Dkt. No. 25).

AND IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read 'RM Gergel', is written over a horizontal line.

The Honorable Richard Mark Gergel
United States District Court Judge

July 30, 2013
Charleston, South Carolina